



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0569]

RIN 1625-AA00

Safety Zone; Head of the Cuyahoga, U. S. Rowing Masters Head Race National Championship, and Dragon Boat Festival, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

---

SUMMARY: The Coast Guard will establish a temporary safety zone on the Cuyahoga River, Cleveland, OH. This safety zone is intended to restrict vessels from a portion of the Cuyahoga River during the Head of the Cuyahoga, the U. S. Rowing Masters Head Race International Championship, and the Cleveland Dragon Boat Festival. This safety zone is necessary to protect spectators, participants, and vessels from the hazards associated with rowing regattas.

DATES: This rule is effective from 7:00 a.m. on September 15, 2012, until 4:00 p.m. on September 16, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket [USCG-2012-0569]. To view

documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716-843-9343, e-mail [SectorBuffaloMarineSafety@uscg.mil](mailto:SectorBuffaloMarineSafety@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

On July 3, 2012, we published a Notice of Proposed Rulemaking (NPRM) entitled Safety Zone; Head of the Cuyahoga and U.S. Rowing Masters Head Race National Championship, Cuyahoga River, Cleveland, OH in the Federal Register (77 FR 39453). We received 2 comments on the proposed rule, although both were made by a single organization—the Lake Carriers' Association (LCA).

The LCA's comments are addressed below. No public meeting was requested, and none was held.

#### B. Basis and Purpose

Between 7:00 a.m. and 4:00 p.m. on September 15, 2012, the annual Head of the Cuyahoga rowing regatta will take place on the Cuyahoga River in Cleveland, OH. In conjunction with the HOTC, the Cleveland Dragon Boat Festival will take place just north of the Detroit Superior Viaduct Bridge on the Cuyahoga River, Cleveland, OH.

Following the HOTC and the Cleveland Dragon Boat Festival on the 15<sup>th</sup> of September, the U.S. Rowing Masters Head Race National Championship will take place on September 16<sup>th</sup> along the same portion of the Cuyahoga River.

The Captain of the Port Buffalo has determined that the HOTC, the U.S. Rowing Masters Head Race National Championship, and the Cleveland Dragon Boat Festival rowing events present significant hazards to public spectators and participants.

#### C. Discussion of Comments, Changes, and the Final Rule

As mentioned above, the Coast Guard received two comments from the LCA in response to the NPRM published on July 3, 2012. One comment was presented directly to the Coast Guard's Marine Safety Unit (MSU) in Cleveland, OH on or about July 6, 2012. The other comment was submitted online on July 24, 2012. The comment submitted online is available in the docket. In sum, both LCA comments convey a concern about the effects that this safety zone

will have on its members ability to enter the port and transit the Cuyahoga river. The LCA's online comment expresses a general dissatisfaction with "lengthy closures of commercial waterways" and a specific disagreement with this safety zone's proposed ten (10) hour closure of the river. Particularly, the LCA claims that the proposed ten (10) hour closure is one (1) hour longer than required by the race sponsors.

In response to the above comments, the Captain of the Port Buffalo consulted with the event sponsor to reassess the necessary enforcement times of this safety zone. Consequently, the Captain of the Port Buffalo has decided to shorten the length of the enforcement period. Previously, the NPRM proposed that the safety zone would be enforced from 6:30 a.m. until 4:30 p.m. on September 15 and 16, 2012. Now, in light of the LCA's concerns, this temporary final rule establishes an enforcement period from 7:00 a.m. until 4:00 p.m. on those same dates.

As discussed in the NPRM, this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Head of the Cuyahoga, U. S. Rowing Masters Head Race National Championship, and the Cleveland Dragon Boat Festival. As mentioned above, the safety zone will be effective and enforced from 7:00 a.m. until 4:00 p.m. on September 15 and 16, 2012.

The safety zone will encompass all waters of the Cuyahoga River, Cleveland, OH from a line drawn perpendicular from position 41° 28'32" N, 081°40'16" W (NAD 83) just south of the

Interstate 490 bridge, north to the Detroit-Superior Viaduct bridge.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan

recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: the owners of operators of vessels intending to transit or anchor in a portion of the Cuyahoga River near Cleveland, Ohio between 7:00 a.m. to 4:00 p.m. on September 15 and 16, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will be enforce for only 9 hours each day for two days. Although the safety zone will apply to the entire width of the river, traffic will be allowed to pass through the zone with the permission of the Captain of the Port. Before the enforcement of the zone, we will issue maritime

advisories widely available to users of the river.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### 5. Federalism

A rule has implications for federalism under Executive Order

13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630,



Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as

follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0569 to read as follows:

§ 165.T09-0569 Safety Zone; Head of the Cuyahoga, U. S. Rowing Masters Head Race National Championship, and Cleveland Dragon Boat Festival, Cuyahoga River, Cleveland, OH.

(a) Location. The safety zone will encompass all waters of the Cuyahoga River, Cleveland, OH from a line drawn perpendicular from position 41° 28'32" N, 081°40'16" W (NAD 83) just south of the Interstate 490 bridge, north to the Detroit-Superior Viaduct bridge.

(b) Enforcement Period. This regulation will be enforced on September 15 and 16, 2012 from 7:00 a.m. until 4:00 p.m.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port

Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 22, 2012

S. M. WISCHMANN  
Captain, U. S. Coast Guard  
Captain of the Port Buffalo

[FR Doc. 2012-21921 Filed 09/05/2012 at 8:45 am; Publication  
Date: 09/06/2012]